



1 January 3, 2006, Counsel for the parties signed a stipulation for binding arbitration.

2 On February 16, 2006, the parties arbitrated the dispute before a mutually agreed upon  
3 arbitrator. On April 18, 2006, Sipple filed his Motion to Enforce Stipulation For Binding  
4 Arbitration. On April 28, 2006, ALLSTATE filed an Opposition, arguing that Sipple breached  
5 the arbitration agreement and, thus, the arbitrator should not be permitted to issue an award  
6 and the Court should order that the parties appoint a new arbitrator to arbitrate the matter  
7 again.

## 8 II. ANALYSIS

9 An agreement to arbitrate is a matter of contract. Chiron Corp. v. Ortho Diagnostic  
10 Sys., 207 F.3d 1126, 1130 (9th Cir. 2000). The parties entered into a stipulation for binding  
11 arbitration that states, "This arbitration shall be binding and shall be the sole and final  
12 resolution and adjudication of this matter." The parties do not dispute that the arbitration  
13 agreement is binding. Therefore, the Court will treat the arbitration agreement as a binding  
14 contract between the parties.

15 ALLSTATE argues that Sipple is in breach of the arbitration agreement because  
16 Sipple's arbitration brief contained (1) A reference to the monies recovered from the third party  
17 driver; and (2) discussions regarding extra-contractual issues, including references to alleged  
18 bad faith in Plaintiff's claims handling and evaluation. Because Sipple allegedly breached the  
19 arbitration agreement, ALLSTATE argues the only reasonable cure for the breach is to hold  
20 a new arbitration. ALLSTATE relies on Northwestern Sec. Ins. Co. v. Clark, 84 Nev. 716, 448  
21 P.2d 39, 41 (1968)(superceded by statute, recognized by Coblentz v. Hotel Employees &  
22 Restaurant Employees Union Welfare Fund, 925 P.2d 496, 500, 112 Nev. 1161, 1169, (Nev.  
23 1996) for the position that an "arbitrator may decide all issues voluntary submitted to him. The  
24 range of his decision is bound only by the scope of the submission."

25 The parties agree that ALLSTATE's counsel mentioned to the arbitrator and Sipple's  
26 counsel about the contents of Sipple's arbitration brief and the matter was discussed prior to  
27 the arbitration. Sipple asserts that the arbitrator informed both parties that this issue would  
28 not have any bearing on his decision as he saw his role in this case as placing a total value

1 on the case. At that point, ALLSTATE elected to go forward with the arbitration and presented  
2 its case to the arbitrator.

3 Sipple argues that by mentioning the receipt of proceeds from the adverse driver's  
4 insurer that it has, at best, committed an immaterial breach of the arbitration agreement.  
5 Furthermore, Sipple argues that because the arbitration agreement put limits on recovery that  
6 ALLSTATE did not suffer any damages. Sipple relies on Reeder v. Kay, 282 Ore. 191, 577  
7 P.2d 925 (Or. 1978), for the position that ALLSTATE did not and will not suffer any  
8 ascertainable damages because of Sipple's mention of the receipt of other monies. Thus,  
9 Sipple asserts, an immaterial breach by one party does not operate to discharge an obligation  
10 by the other party. Id. at 194.

11 A party is not automatically excused from the performance of contract obligations every  
12 time the other party commits a breach. Management Computer Services, Inc. v. Hawkins,  
13 Ash, Baptie & Co., 206 Wis.2d 158, 557 N.W.2d 67 (1996). The parties agree that Sipple's  
14 arbitration brief mentioned the receipt of proceeds from the adverse driver's insurer, but the  
15 mention of it is an immaterial breach of the stipulation. If the breach is relatively minor and not  
16 of the essence, the contract is still binding. Id.

17 Moreover, ALLSTATE informed the arbitrator about the information that was mentioned  
18 in Sipple's brief and these facts were discussed with the arbitrator and Sipple's counsel prior  
19 to arbitration. After this discussion, ALLSTATE elected to go forward with the arbitration and  
20 waived its right to assert a breach.

21 Under strict formulation of the election doctrine, any act indicating an intent to continue  
22 the contract is an election, and election to continue may occur simply by failure of the injured  
23 party to take action to end the agreement within a reasonable time after becoming aware of  
24 the facts. Under that view, if performance continues and is accepted, the right to end the  
25 contract cannot be preserved even by explicit expression of intent; any inconsistent act results  
26 in the loss of right, unless the other party assents to its retention by the aggrieved party. Cites  
27 Serv. Helex v. U.S., 211 Ct.Cl. 222, 543 F.2d 1306,1313 (1976); See generally 5 S. Williston,  
28 Contracts ss 683-85 (3d ed. W. Jaeger 1961).

1 Here, there is no dispute that ALLSTATE elected to go forward with the arbitration. As  
2 a result, it forfeited its right to now seek to avoid the arbitrator's decision, whatever it might be.

3 **III. CONCLUSION**

4 Based on the foregoing,

5 IT IS HEREBY ORDERED that Sipple's Motion to Enforce Stipulation For Binding  
6 Arbitration (#13) is GRANTED.

7 DATED this 22<sup>ND</sup> day of December, 2006.

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10 UNITED STATES DISTRICT JUDGE  
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